IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 93 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAJUL CONSTRUCTION CO.

Appearance:

1. INCOME TAX REFERENCE No. 93 of 1988
MR BB NAYAK FOR MR MANISH R BHATT for Applicant.
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This reference is at the instance of revenue. Following question has been referred for the opinion of this Court in respect of the assessment year 1979-80 :

"Whether in law and on facts, the firm was entitled to registration ?"

2 The I.T.O. refused to grant registration to the reconstituted firm on the ground that with effect from 1.9.1978 one Mr.M.S.Parikh joined the assessee firm in his capacity as a trustee of Sakarlal Maneklal Trust, but the ultimate beneficiaries of the trust were minors and they could not have been made to share losses. The Appellate Assistant Commissioner reversed that view on the ground that partnership did not impose any liability on the minors. The Appellate Assistant Commissioner accordingly directed the I.T.O. to grant registration. The Tribunal confirmed the order of the Assistant Appellate Commissioner and expressed the view that Mr.M.S.Parikh who has joined the firm in his capacity as a trustee of Sakarlal Maneklal Trust, is a partner for all intents and purpose. Hence, this reference at the instance of the revenue.

3 We have heard Mr.B.B.Nayak for the revenue. Though served none appears for the respondent assessee.

4 The learned Counsel for the revenue fairly points out that the controversy raised herein is now concluded by this Court on 18/9/2001 in the case of C.I.T. vs. United Chemic (Income Tax Reference No.123 of 1988), wherein we have followed the decision of the Apex Court in the case of CIT vs. Bhagyalakshmi & Co.,(1965) 55 ITR 660. Following the aforesaid decision in Income Tax Reference No. 123 of 1988, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt